**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**WRIT PETITION NO.8152 OF 2005**

1. Unknown and unnamed legal representatives
of late Valakkenchari K. Appu (Deleted)
and

2. Dr.Mrs. Subblakshmi Prakash ...Petitioners.

V/s.

Krishna Daulatrao Amre and Ors. ...Respondents.

Shri A.H.Palekar, adv. for the Petitioners.
Shri N.V.Walawalkar with Shri V.E.Pereira,
adv. for the Respondents.

**CORAM: V.C.Daga, J.**
**DATE : 1st December, 2005.**

**P.C.:**

1. Heard the learned counsel for the Petitioners.

2. This Petition is directed against the judgment and order of the Division Bench of the Small Causes Court passed in Appeal No.109 of 2004 arising out of R.A.E. Suit No.14/23/2000 whereby the judgment and order of the Trial Court dated 13th November, 2003 in R.A.E.Suit No.14/23/2000 came to be set aside.

3. It is not in dispute that at one point of time, after vacation of the suit premises by the tenant, Mr.Dilip Surve, the Respondent- landlord came in possession of the

flat No.4 located on the ground floor. At the same time, flat no.10 which is located on the first floor was in possession of his son who was staying with his wife and two children. Whereas flat no.3 on the ground floor was and is in possession of the present Petitioner/Tenant.

4. In the partition suit filed by the daughter possession of flat no.4 was taken over by the Court Receiver appointed by this Court in a pending suit, leaving part of one room admeasuring 10 X 10 for being occupied by the present Respondents, with the result, flat no.8 is presently occupied by the Respondent No.1 alongwith his wife, son, daughter in law and their two children with one room admeasuring 10 X 10 as stated herein.

5. The Respondent No.1 is presently 78 years old and his wife is 70 years old. It is difficult for both of them to accommodate themselves in flat no.8 admeasuring 550 square foot with additional room of 10 X 10. This need of the Respondent-landlord was upheld by the lower Appellate Court by a reasoned order holding that the Landlord would suffer greater hardship as compared to Petitioner/Tenant.

6. As against above, Petitioner/Tenant herself is in U.S.A. since 1991. She never came to India till date after 1991. Her daughter is in U.S.A. since 1993. Her

husband most of the time remains in U.S.A. but keeps on coming to India for 4-5 months and occupies the subject flat during his stay in India.

7. Considering the aforesaid factual position, it is not possible to say that the Respondent/landlord failed to prove his need. If comparative hardship is considered, one cannot say the Petitioner/tenant would suffer more hardship than the Respondent-Landlord.

8. In the above circumstances, no fault can be found with the view taken by the lower Appellate Court. Petition is, therefore, dismissed with No order as to costs.

9. At this stage, the learned counsel appearing for the Petitioner sought time to vacate the suit premises subject to furnishing of usual undertaking of all the three family members.

10. Mr.Walawalkar, the learned counsel appearing for the Respondent fairly stated that his client has no objection for grant of time to vacate the suit premises. However, that time should be restricted to one year.

11. Having heard both the parties agree that one year period to vacate would be reasonable. Prayer made is

reasonable. Hence, I grant one year time to the Petitioner to vacate suit premises subject to furnishing usual undertaking by all the three members. So far as husband of the Petitioner, who is present in the Court, shall furnish his undertaking within two weeks. Rest of the family members can furnish similar undertakings within four weeks from today since the Petitioner and her daughter both are presently, residing at U.S.A. Copies of the undertaking shall be furnished to other side. In the event of failure, it would be open for the Respondent-Landlord-Defendants to execute the decree in accordance with law.

**(V.C.Daga, J.)**